

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 3284 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE A.M.KAPADIA

- =====
1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the concerned : NO
Magistrate/Magistrates, Judge/Judges, Tribunal/Tribunals?

GOVINDBHAI MAVAJIBHAI RATHOD

Versus

NEW INDIA INSURANCE CO. LTD

Appearance:

1. First Appeal No. 3284 of 2004
MR PREMAL S RACHH for Appellant No.
MR SUNIL B PARIKH for Respondent No. 1
NOTICE SERVED BY DS for Respondent No. 2
-

CORAM : HON'BLE MR.JUSTICE A.M.KAPADIA

Date of decision: 11/02/2005

ORAL JUDGEMENT

ADMIT.

2. Mr. Sunil B. Parikh, learned advocate appears and waives service of notice of admission on behalf of respondent No.1.

3. By filing instant appeal under Section 173 of the Motor Vehicles Act 1988 ('the Act' for short), the appellant ('the claimant' for short) seeks to challenge the judgement and award dated 10.9.2004 rendered in MACP No. 498 of 2002 by the MACT (Aux.), Jamnagar, by which the claim petition filed under Section 166 of the Act, by the claimant claiming compensation of Rs.1,00,000 on account of the injuries sustained by him in a motor vehicular accident, came to be partly allowed and thereby he was awarded total compensation of an amount of Rs.29,600 together with interest @ 9% per annum from the date of claim petition till its realization with proportionate cost from respondent Nos. 1 and 2 jointly and severally.

4. It was the case of the claimant that on 24.4.2002, at about 6:00 PM, he was going to his house on the bicycle after finishing masonry work. While crossing the road near New School, all of sudden respondent No.2 came there driving Kinetic Honda bearing registration No. GJ 10H 7274 in rash and negligent manner and in excessive speed and dashed with the bicycle of the claimant, as a result of which the claimant fell down from his bicycle on the road and received grievous injuries, which has resulted into linear fracture in radius of his right hand. According to the claimant, the accident has taken place due to rash and negligent driving of the Kinetic Honda by respondent No.2.

5. Putting forth the claim for compensation it was averred by the claimant that he was hospitalised in Dr. D.C.Mehta's hospital for primary treatment and thereafter he was shifted to G.G.Hospital, Jamnagar for further treatment. Plaster was applied on his hand for three months. It was stated that due to the said injuries he suffered much pain, shock and suffering and during the said period he could not attend his masonry work and therefore he sustained economic loss. It was also asserted that as a result of the fracture he received permanent partial disability to the extent of 10%. It was stated that on the day of accident he was doing masonry work and was earning Rs.250 per day. Therefore the claimant has filed the claim petition to recover an amount of Rs.1,00,000 as compensation from the rider-cum-owner and insurance company of the Kinetic Honda involved in the accident.

6. On service of the notice, respondent No.1 Rider-cum-owner of the Kinetic Honda elected not to remain present whereas respondent No.2 - Insurance Company contested the claim petition by filing written statement exh. 37 wherein, inter alia the factum of accident was denied. The claim put forth by the claimant was also denied. Nature of injury sustained by the claimant was also denied. It was also asserted that the claimant himself was negligent in crossing the road which has resulted into the mishap, therefore, he himself was solely negligent for the occurrence of the accident to the fullest extent and therefore it was prayed to dismiss the claim petition.

7. The Tribunal, on appreciation, evaluation, critical analysis as well as documentary evidence, came to the conclusion that the accident has taken place because of rash and negligent driving on the part of the rider of the Kinetic Honda and therefore he is liable as tortfeasor. The said vehicle was at the relevant time insured with the Insurance Company, therefore Insurance Company is liable to indemnify the claim.

8. So far as the quantification of compensation is concerned, Tribunal has awarded the compensation to the claimant in following breakup:

Rs.6000.00 Actual loss of income.
Rs.18,000.00 Future loss of income.
Rs.1600.00 Medical Treatment
Rs.2000.00 Pain, Shock and Suffering.
Rs.500.00 Special Diet
Rs.500.00 Attendant charges.
Rs.1000.00 Transportation

Rs.29600.00 Total

The claimant was accordingly awarded Rs.29,600 together with interest @ 9% per annum from the date of application till its realisation with proportionate cost from respondent Nos.1 and 2, which has given rise to this appeal at the instance of the original claimant.

9. Mr. Premal S. Rachh, learned advocate of the claimant, contended that the award is on the lower side. The claimant suffered linear fracture of radius on his right hand and as a result of which he had to remain out of job for three months as plaster was applied, therefore amount of Rs.2000 awarded towards pain, shock and suffering is extremely on lower side. According to him, under this head, the Tribunal ought to have awarded

atleast Rs.15000. He further contended that the Tribunal ought to have considered future prospective income for the purpose of determining appropriate compensation under the head of Economic Loss. However, the Tribunal has not at all considered the prospective future income. Therefore the quantum of compensation awarded is less and the same is required to be modified by enhancing the same. He therefore urged to allow this appeal.

10. Per contra Mr.Sunil B. Parikh, learned advocate for respondent No.1 - The New India Insurance Co. Ltd. contended that Tribunal has awarded just compensation by giving breakup under all the heads and the Tribunal has while quantifying the amount of compensation considered all the heads under which compensation could be awarded. According to him, the claimant sustained a very minor fracture and therefore amount of Rs.2000 awarded for mental pain, shock and suffering is not on lower side, but actually it is a just compensation. He contended that the Tribunal has considered monthly income of the claimant at Rs.3000 which is on higher side. Therefore, according to him, no error is committed by the Tribunal in quantification of compensation, which does not warrant any interference by this Court in this appeal. He, therefore, contended that there is no substance in this appeal and urged to dismiss the appeal.

11. This Court has considered the rival submissions advanced by learned advocates appearing for the parties, perused the impugned judgement and award and the set of evidence supplied by the learned advocates appearing for the parties during the course of their submissions.

12. So far as the factum of accident is concerned, there is no dispute. So far as negligence on the part of the rider of the vehicle is concerned, it also cannot be disputed. The Tribunal has very rightly held that the rider of the Kinetic Honda was rash and negligent while driving the said vehicle. So far as the quantification of compensation is concerned, on perusal of the certificate issued by G.G.Hospital, Jamnagar, according to this Court, the claimant sustained a linear fracture in radius on his right hand. It has also come in evidence that the claimant was a mason and therefore he could not work for a period of three months.

13. In aforesaid view of the matter, according to this Court, amount of Rs.2000 awarded under mental pain, shock and suffering is extremely on the lower side. Instead of that, the Tribunal ought to have awarded atleast Rs.12000 under this head which would meet the

ends of justice, therefore, to that extent the impugned award is required to be modified. Therefore, it has to be deduced that the claimant is entitled to an additional amount of compensation of Rs.10,000 under the head of mental pain, shock and suffering and accordingly this Court awards the additional compensation of Rs. 10,000/in favour of the claimant.

14. So far as the quantification of compensation determined and payable under other heads is concerned, this Court does not deem it expedient to interfere with the same.

15. For the foregoing reasons, the appeal succeeds in part and accordingly it is partly allowed. The claimant is entitled to receive additional amount of compensation of Rs.10,000 together with interest @ 9% per annum from the date of filing of the application till its realisation, however with no order as to costs.

16. Mr. Sunil.B Parikh, learned advocate of the respondent No.1 - The New India Insurance Co. Ltd. states that the Insurance Company shall deposit the said amount within a period of 8 weeks hereof before the Tribunal. On respondent No.1 depositing the aforesaid amount, the Tribunal is directed to disburse the said amount in favour of the claimant upon due verification by an Account Payee Cheque after deducting Court fees stamp, if any.

(A.M.Kapadia, J)
Jayanti*